

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
THE PUGET SOUND MARINERS' MUSEUM,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 235

FINDINGS OF FACT,
CONCLUSION AND ORDER

This matter, the appeal of a \$100.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before all members of the Pollution Control Hearings Board as a formal hearing in the Tacoma, Pierce County, law offices of Burkey, Marsico, Rovai & McGoffin at 1:30 p.m., February 9, 1973.

Appellant appeared through its attorney, Robert S. Felker, and respondent through its counsel, Keith D. McGoffin. Eugene Barker, Tacoma court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were offered and

1 admitted. Counsel made closing arguments.

2 On the basis of testimony heard, closing arguments by counsel and
3 exhibits examined, the Pollution Control Hearings Board prepared Proposed
4 Findings of Fact, Conclusions and Order which were submitted to the
5 appellant and respondent on March 12, 1973. No objections or exceptions
6 to the Proposed Findings, Conclusions and Order having been received, the
7 Pollution Control Hearings Board makes and enters the following

8 FINDINGS OF FACT

9 I.

10 Appellant, a non-profit corporation with headquarters in Gig Harbor,
11 Pierce County, was given the MV SWIFTSURE, a former light ship, by the
12 United States Coast Guard. To receive the additional donation of equip-
13 ment from the United States Navy, the SWIFTSURE, in October of 1972, was
14 towed from its anchorage in Gig Harbor to a moorage alongside a
15 deactivated Victory ship anchored near the Puget Sound Naval Shipyard
16 in Sinclair Inlet, Kitsap County.

17 II.

18 At 6:30 a.m. on October 16, 1972, one of the SWIFTSURE's Diesel
19 engines was activated at a governor-regulated speed of 1400 r.p.m. to
20 generate power for electric lights on the ship. This engine was
21 operated steadily in this fashion until it was secured at 10:00 p.m.
22 on October 16, 1972. A light, wispy, gray smoke was emitted from the
23 SWIFTSURE's stack from the operation of this engine.

24 III.

25 The small tug (unidentified in testimony), which had towed the
26 SWIFTSURE to Sinclair Inlet, returned to the SWIFTSURE about 2:00 p.m.

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1 on October 16, 1972 after a noon hour call to the Shipyard and began
2 to assist in repositioning the SWIFTSURE alongside the Victory ship
3 to accommodate transferral of donated equipment. When sudden bursts of
4 power were demanded of the tug's engine, black smoke was emitted from
5 its stack.

6 IV.

7 In the vicinity of 2:00 p.m. on October 16, 1972, an inspector
8 employed by respondent took smoke emission observations of the three
9 vessels from shore, about 300 yards distant from them. He recorded an
10 emission darker in shade than No. 2 on the Ringelmann chart for ten
11 minutes. Later, he issued Notice of Violation No. 5603 against
12 appellant, citing the SWIFTSURE as the cause of the emission. In
13 connection therewith, respondent subsequently cited appellant with
14 Notice of Civil Penalty No. 507, the subject of this appeal, in the sum
15 of \$100.00.

16 V.

17 Section 9.03(a) of respondent's Regulation I makes it unlawful to
18 cause or allow the emission of an air contaminant for more than three
19 minutes in any hour of a shade darker than No. 2 on the Ringelmann
20 chart.

21 From these Findings, the Pollution Control Hearings Board comes
22 to this

23 CONCLUSION

24 There was a smoke emission violation in the near vicinity of the
25 SWIFTSURE in Sinclair Inlet the early afternoon of October 16, 1972.
26 There is no persuasive proof, however, that the black smoke was

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1 coming from the SWIFTSURE. To the contrary, there is a preponderance of
2 testimony that the black smoke was caused by the maneuvering tug and that
3 the smoke that was being emitted from the SWIFTSURE's stack was not in
4 violation of respondent's regulation.

5 THEREFORE, the Pollution Control Hearings Board issues this

6 ORDER

7 The appeal is sustained and Notice of Civil Penalty No. 507 is
8 remanded to respondent for cancellation.

9 DONE at Olympia, Washington this 3rd day of April, 1973.

10 POLLUTION CONTROL HEARINGS BOARD

11 Walt Woodward
12 WALT WOODWARD, Chairman

13 W. A. Gissberg
14 W. A. GISSBERG, Member

15 James T. Sheehy
16 JAMES T. SHEEHY, Member
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